IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1046 of 1990

with

SPECIAL CIVIL APPLICATION No 1480 of 1990

and

SPECIAL CIVIL APPLICATION NO 1480 OF 1990 TO 1546 OF 1990

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVLUBHAI MEHDUBHAI

Versus

BHARTIA AGRO INDUSTRIES FOUN- -DATION (BAIF)

Appearance:

MR MUKESH A PATEL for Petitioner No. 1-68

MR MG NAGARKAR for RespondentS.

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Mukesh A. Patel for the petitioners and Mr. Nagarkar for the respondents in this group of petitions. This petitions were admitted by this court by issuing rule thereon on 15.2.1990 and ad.interim relief in terms of para 10(D) was granted subject to clarification that the respondents will be restrained from terminating services of the petitioners on the ground that they have demanded minimum wages and other grievance in the petition. As per para 10(A) of the petition, the petitioners are praying for regularization of their service and for making them permanent in service. It is also prayed to pay them arrears of difference between the amount of wages actually paid and the amount of wages which are being paid to the other permanent employees in the respective cadres and to pay them in future equal wages which are being paid to the other permanent employees in the respective cadre and thereafter, interim relief has been prayed in the subsequent paragraphs (C) and (D) of the petition. Reply has been filed by respondent NO.2. Rejoinder thereto has been filed by the petitioners.

Learned advocate Mr. Mukesh Patel for the petitioners has submitted that the respondent trust is controlled by the Central Government as well as the State Government and, therefore, they are the State Authority within the meaning of Article 12 of the Constitution of India. He also submitted that the engagement of the petitioners has not been disputed by the respondents but the mode, nature of engagement has been disputed. He states that the land is not belonging to the petitioners but is belonging to the trust, they are working as outsiders as employees of the respondents. He also submitted that the name of the trust has been changed but it makes no difference as regards entity for the respondents from "Bharatiya" to "Indian". He submits that the right to regularization of service is based upon the work and continuation of work which are there and, therefore, the petitioners are entitled for regularization of their service and /or entitled for the benefit of permanent employment. He also submits that there are no specific rules and/or regulations provided in the respondent trust for recruitment of any employees. He also submits that if the trust is having beneficial scheme, then, the trust should not be allowed to exploit

the workmen. He submits that the status of the respondent trust is like a State Government. He placed reliance on the following decisions :

(1) People's Union for Democratic Rights and others v. Union of India and others [AIR 1982 SC 1473]
(2) Daily Rated Casual Labour employed under P & T Department through Bharatiya Dak Tar Mazdoor Manch v. Union of India and others [AIR 1987 SC 2342]
(3) Delhi Municipal Karmachari Ekta Union (Regd.) v. P.L. Singh and others [AIR 1988 SC 519].
(4) Dhirendra Chamoli and another v. State of U.P. [(1986) 1 SCC 637]

(5) Daily Rated Casual Labour employed under the P & T Through Bharatiya Dak Tar Mazdoor Manch versus Union of India [(1988) 1 SCC 122].

Except the above, no other submissions were made by Mr. Patel and no other decision was cited by him before this Court.

On the other hand, learned advocate Mr. Nagarkar appearing for the respondents in this group of petitions has submitted that the detailed reply has been filed by the respondents challenging the averments made by the petitioners. He submitted that the respondent trust is not a State within the meaning of Article 12 of the Constitution and, therefore, same is not amenable to the writ jurisdiction of this court under Article 226 of the Constitution of India. He submits that there is no Government control either of the Centre or of the State upon the respondent trust. He submits that the respondent is a charitable trust having separate entity not controlled by the State or the Central Government in any manner whatsoever. The respondent trust is not getting any help from the Central or State Government in respect of finance or funds. Therefore, writ petition is not maintainable. He also submits that the petitioners were not an employees of the respondent trust but were the volunteers and, therefore, there was no relationship of employee and the employer between the parties. He submits that no salary was paid to them but some minimum requirement as per the minimum wages Act has been paid to them which cannot be considered as wages or salary. He also submits tat there is no rule in the respondent trust to regularize the services of the petitioners. No appointment orders were issued in their favour by the trust. It is a trust doing some beneficial work in the society for rehabilitation of the families and and their

members for various kind of project. According to him, the petitioners are volunteers and not a workmen. He submits that the petitioners herein are not working with the trust. He has produced list of 68 petitioners pointing out current position of the petitioners wherein most of the petitioners are engaged either in any other NGO/Government service/retired/shifted to other village/married and started their own business and other activities. He has also served copy of the said list to the learned advocate Mr. Mukesh Patel. Same is ordered to be taken on the record of this petition. Therefore, according to Mr. Nagarkar, none of the petitioners are working with the respondents since last many years and, therefore, according to him, this Court cannot examine the disputed questions of fact between the parties. According to him, this court cannot go into the facts as to whether their engagement was as an employee or workmen of the trust or not and, therefore, he submitted that the petitions may be dismissed without entering into those contentions raised by the petitioners but denied by the respondents. He also relied upon the recent decision of the Full Bench of this Court reported in 2004 (2) GLH 692 relating to regularization and submitted that no order of regularization can be passed without following proper procedure of recruitment.

I have considered the submissions made by the learned advocates for the parties. I have considered the averments made by the petitioners in the memo of petition as well as reply and the rejoinder thereto. I have also considered the list produced by the learned advocate Mr.Nagarkar on behalf of the trust. Looking to the prayers made by the petitioners for directing the respondents to regularize their services, to grant them permanent employment and top ay arrears of difference of salary to the petitioners, the question is as to whether the petitioners are having any legal right of regularization or not; whether their claim is based upon any agreement, settlement, rules, resolution or circular or not. Learned advocate Mr. Patel has not been able to point out that their claim for regularization is based on any such material but relying on the aforesaid decisions, he submitted that the petitioners are entitled for regularization of their services. I have considered the said decisions which are based on the peculiar facts of those cases. Right for regularization in service and to be come permanent or regular employee is legal right which is required to have the basis of any statutory rules or settlement or award or agreement or resolution. Since it has not been successfully pointed out by the learned advocate Mr. Patel that such claim is based on

either of such material, it cannot be held that they are entitled for regularization. Further, considering the disputed questions of facts between the parties, according to my opinion, this court cannot go into the disputed questions of fact while exercising powers under Article 226 of the Constitution of India. As per the list produced by the learned advocate Mr. Nagarkar, almost all the petitioners have left the respondent trust and shifted elsewhere and, therefore, this being the oldest petition, of the year 1990 and since more than fourteen years have gone, according to my opinion, this court, while exercising extra ordinary powers under Article 226 of the Constitution of India cannot appropriately deal with and decide the questions of fact raised by the petitioner but disputed by the respondents.

I have considered the decisions cited by the learned advocate Mr. Patel before this Court. However, considering the peculiar facts of the case before hand, according to my opinion, same would not apply.

Therefore, these petitions are required to be dismissed. Accordingly, these petitions are dismissed. However, in case if any alternative remedy is available to the petitioners in accordance with law, it will be open to pursue the same according to law since this court has not dealt with and decided the disputed questions of fact between the parties. Rule in each of these petitions shall stand discharged. Interim relief granted earlier shall stand vacated. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas